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WASHINGTON, DC

OFFICE OF THE UNDER SECRETARY

24 Jul 2003

MEMORANDUM FOR SEE DISTRIBUTION

FROM: SAF/IAPX
1080 Air Force Pentagon
Washington, DC 20330-1080

SUBJECT: The American ServiceMembers Protection Act's (ASPA) Impact on USG Military Assistance (IAPX 03-031)

Attached for your information and widest dissemination is guidance on the American ServiceMembers Protection Act's (ASPA) and its impact on military assistance programs.

The only military assistance programs affected are grant Excess Defense Articles (EDA), new Drawdowns, International Military Education and Training (IMET), and/or defense articles or defense services furnished with USG assistance such as Foreign Military Financing (FMF). Programs not affected by ASPA are Economic Support Funding (ESF), Peacekeeping Operations Funding (PKO), Counter-Terrorism (CT), Drug Interdiction and numerous other types of development assistance.

If you have any questions, please contact Sheilah Boyd, SAF/IAPX, DSN 425-8366, email: sheilah.boyd@pentagon.af.mil.

//SIGNED//
TERRY L.BATES
Chief, Security Assistance Policy Division
Dep Under Secretary, Int'l Affairs

Attachments:

1. DSCA Msg 150142Z Jul 03
2. Distribution List

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Sent: Thursday, July 17, 2003 9:34 AM
To: saf.ia@pentagon.af.mil
Subject: [6R02684123U.CGS] THE AMERICAN SERVICEMEMBERS PROTECTION ACT'S
(ASPA) IMPACT ON

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R 171331Z JUL 03
FM PTC EMAIL SYSTEM WASH DC
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R 150142Z JUL 03
FM SECDEF WASHINGTON DC//USDP-DSCA//
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RUEHTI/ODC TIRANA AL
RUEHTI/USDAO TIRANA AL
RUEHCO/AMEMBASSY COTONOU
RUEHVJ/USDAO SARAJEVO//AMEMBASSY SARAJEVO/ODC//
RUEHOR/USODC GABORONE BC
RUEHSF/AMEMBASSY SOFIA//ODC//
RUEHGI/AMEBASSY BANGUI
RUEHKI/USDAO KINSHASA CG
RUEHVB/ODC ZAGREB HR
RUEHTL/USDAO TALLINN EN//ODC//
RUEHSQ/ODC SKOPJE MK
RUEHAR/AMEMBASSY ACCRA
RUEHRA/USODC RIGA LG
RUEHMR/AMEMBASSY MASERU

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RUEHVL/USODC VILNIUS LH
RUEHLG/AMEMBASSY LILONGWE//ODC//
RUEHBP/USDAO BAMAKO ML
RUEHVT/AMEMBASSY VALLETTA
RUEHWD/AMEMBASSY WINDHOEK//WA//
RUEHNM/USDAO NIAMEY NG
RUEHUJA/USDAO ABUJA NI
RUEHBM/AMEMBASSY BUCHAREST//ODC//
RUEHSL/ODC BRATISLAVA LO
RUEHSL/USDAO BRATISLAVA LO
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RUEHSA/ODC PRETORIA
RUEHDR/AMEMBASSY DAR-ES-SALAAM
RUEHKM/AMEMBASSY KAMPALA
RUEHLS/USDAO LUSAKA ZA
RUEHSU/USDAO SUVA FJ
RUEHPL/AMEMBASSY PORT LOUIS
RUEHAP/AMEMBASSY APIA
RUEHWN/CHUSMLO BRIDGETOWN BB
RUEHBE/CHUSMLO BELIZE CITY BH

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RUEHLP/USMILGP LA PAZ BL
RUEHBR/CHUSMLO BRASILIA BR
RUEHRI/MLO RIO SECTION RIO DE JANEIRO BR
RUEHBO/USMILGP BOGOTA CO
RUEHSJ/CHODR SAN JOSE CS
RUEHQT/USMILGP QUITO EC
RUEHTG/USMILGP TEGUCIGALPA HO
RUEHZP/USMILGP PANAMA CITY PM//
RUEHAC/ODC ASUNCION PA
RUEHPE/CHMAAG LIMA PE
RUEHSP/CHUSMLO PORT OF SPAIN TD
RUEHMN/ODC MONTEVIDEO UY//CC//
RUEHCV/USMILGP CARACAS VE
RUEADWD/DA WASHINGTON DC//SAAL-NP//
RUEAAMC/CDRUSASAC ALEXANDRIA VA //AMSAC-MP-OL/MP/MM/ME/MA//
RHMFIUU/CDRUSASAC ALEXANDRIA VA //AMSAC-MP-OL/MP/MM/ME/MA//
RUERAIX/DIRSATFA FT MONROE VA //ATFA/R/P//
RHMFIUU/DIRSATFA FT MONROE VA //ATFA/R/P//
RUERSOC/CDRSATMO FT BRAGG NC//AOJK-SA//
RUENAAA/NAVY IPO WASHINGTON DC//02/02T//

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RULSDMN/NAVICP PHILADELPHIA PA//OF//
RULSFAN/COMNAVAIRSYS COM PATUXENT RIVER MD//AIR1.4//
RULSSEA/COMNAVSEASYS COM WASHINGTON DC//PMS380//
RUWDHFG/COMSPAWARSYS COM SAN DIEGO CA//054-1//
RUCTPOV/NETSAFA PENSACOLA FL//00/N-1//
RULSMCA/COMMARCORSSYS COM QUANTICO VA//IP//
RUEACMC/CMC WASHINGTON DC//PLU-SA/FMS//
RHMFIUU/CMC WASHINGTON DC//PLU-SA/FMS//
RULSJGA/COMDT COGARD WASHINGTON DC//G/CI//
RUEAHQA/OSAF WASHINGTON DC//IA/IAP//
RHMFIUU/AFSAC WRIGHT PATTERSON AFB OH//CC/GB/IA//
RHWRAAA/AFSAT RANDOLPH AFB TX//CC/TO/TOC//
RHMFIUU/AFSAT RANDOLPH AFB TX//CC/TO/TOC//
RUVKDVA/COMDT DLIELC LACKLAND AFB TX
RUDIDFD/DFAS-DENVER CENTER DENVER CO/AY-DE//
RUDJAAX/DEFINSTEINLEGSTUDIES NEWPORT RI
INFO RUCAACC/USCENTCOM MACDILL AFB FL//CCJ5/CCJ4//
RUFGTCC/USEUCOM VAIHINGEN GE//ECJ4-IDS/ECJ5-E//
RHHMUNA/USPACOM HONOLULU HI//J4/J45//
RUMIAAA/USOUTHCOM MIAMI FL//SCJ5-SA//

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RUCQSOC/USSOCOM MACDILL AFB FL//SOOP-PD//
RUEKJCS/JOINT STAFF WASHINGTON DC//J3/J5/J6/J4//
RUEANBA/DLSC FT BELVOIR VA//CI//
RUEOUAA/DLIS BATTLE CREEK MI
RHMFIUU/DLIS BATTLE CREEK MI
RUEOUAB/HQ DRMS BATTLE CREEK MI
RHMFIUU/HQ DRMS BATTLE CREEK MI
RUEHC/SECSTATE WASHINGTON DC//PM/RSAT//
RHMFIUU/DISAM WRIGHT PATTERSON AFB OH
RUEKJCS/SECDEF WASHINGTON DC//ISA/ISP/DSCA-DLO//
RUEKJCS/SECDEF WASH DC//USDP-CH//

BT

UNCLAS

SUBJ: THE AMERICAN SERVICEMEMBERS PROTECTION ACT'S (ASPA) IMPACT ON
USG MILITARY ASSISTANCE

REF A: MSG SECSTATE WASHDC/010405Z JUL 03

REF B: MSG SECSTATE WASHDC/232222Z MAY 03

1. ON 1 JULY 2003 KEY PROVISIONS OF THE AMERICAN SERVICEMEMBERS
PROTECTION ACT (ASPA) [TITLE II, PUBLIC LAW 107-206] BECAME
EFFECTIVE. IN ACCORDANCE WITH REF A (DIRECTION FROM THE DEPARTMENT

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OF STATE), AS OF 1 JULY 2003, ASPA RESTRICTS PROVISION OF "MILITARY
ASSISTANCE" TO PARTIES TO THE ROME STATUTE WHICH CREATED THE
INTERNATIONAL CRIMINAL COURT (ICC). U.S. "MILITARY ASSISTANCE," IS
DEFINED BY THE ASPA, SECTION 2013(13), AS MEANING ASSISTANCE
UNDER CHAPTER 2 OR 5 OF PART II OF THE FOREIGN ASSISTANCE ACT
OR DEFENSE ARTICLES OR SERVICES FURNISHED WITH USG ASSISTANCE,
INCLUDING LOANS AND GUARANTEES, UNDER SECTION 23 OF THE ARMS
EXPORT CONTROL ACT. THIS COVERS GRANT EXCESS DEFENSE
ARTICLES (EDA), MILITARY ASSISTANCE DRAWDOWNS, INTERNATIONAL MILITARY
EDUCATION AND TRAINING (IMET), OR DEFENSE ARTICLES OR DEFENSE
SERVICES FURNISHED WITH FOREIGN MILITARY FINANCING (FMF).
2. THE RESTRICTION ON MILITARY ASSISTANCE DOES NOT APPLY TO:
NATO COUNTRIES; MAJOR NON-NATO ALLIES (ARGENTINA, AUSTRALIA, BAHRAIN,
EGYPT, ISRAEL, JAPAN, JORDAN, THE REPUBLIC OF KOREA, AND NEW
ZEALAND); OR TAIWAN. ASPA PROVIDES THE PRESIDENT WITH THE
FLEXIBILITY TO WAIVE THE RESTRICTIONS FOR STATES THAT HAVE ENTERED
INTO AN ARTICLE 98 AGREEMENT (PROTECTS U.S. PERSONS FROM
JURISDICTION UNDER A TREATY TO WHICH THE U.S. HAS CHOSEN NOT TO
BECOME A PARTY) WITH THE U.S., OR FOR OTHER STATES, IF DETERMINED TO
BE IMPORTANT TO THE U.S. NATIONAL INTEREST.

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3. IN ACCORDANCE WITH REF A, THE PRESIDENT HAS DETERMINED (PRESIDENTIAL DETERMINATION 2003-27, DATED 30 JUNE 2003) THAT, WITHIN THE SCOPE OF THE ASPA, FULL, PERMANENT WAIVERS WILL BE GRANTED TO THOSE STATES THAT HAVE SIGNED AND RATIFIED ARTICLE 98 AGREEMENTS FOR AS LONG AS THOSE AGREEMENTS REMAIN IN FORCE. THE PRESIDENT HAS FURTHER DECIDED TO GRANT LIMITED DURATION WAIVERS (4 OR 6 MONTHS, DEPENDING ON WHETHER THE ARTICLE 98 AGREEMENT WAS SIGNED BEFORE OR AFTER 1 MAY 2003) TO STATES THAT HAVE SIGNED SUCH AN AGREEMENT, BUT NOT YET BROUGHT IT INTO FORCE.

4. GABON, GAMBIA, MONGOLIA, SENEGAL, SIERRA LEONE, AND TAJIKISTAN HAVE EACH ENTERED INTO AN AGREEMENT WITH THE U.S. PURSUANT TO ARTICLE 98 OF THE ROME STATUTE. THEREFORE, THE PRESIDENT HAS WAIVED THE PROHIBITIONS OF THE ASPA WITH RESPECT TO THESE COUNTRIES FOR AS LONG AS SUCH AGREEMENT REMAINS IN FORCE.

5. THE PRESIDENT HAS DETERMINED THAT IT IS IMPORTANT TO THE NATIONAL INTEREST OF THE U.S. TO WAIVE THE PROHIBITIONS OF THE ASPA WITH RESPECT TO AFGHANISTAN, DJIBOUTI, DEMOCRATIC REPUBLIC OF THE CONGO, EAST TIMOR, GHANA, HONDURAS, AND ROMANIA UNTIL 1 NOVEMBER 2003.

6. THE PRESIDENT HAS DETERMINED THAT IT IS IMPORTANT TO THE

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NATIONAL INTEREST OF THE U.S. TO WAIVE THE PROHIBITIONS OF THE ASPA WITH RESPECT TO ALBANIA, BOLIVIA, BOSNIA-HERZEGOVINA, BOTSWANA, FORMER YUGOSLAV REPUBLIC OF MACEDONIA (FYROM), MAURITIUS, NIGERIA, PANAMA, AND UGANDA UNTIL 1 JANUARY 2004.

7. "MILITARY ASSISTANCE" IS SUSPENDED FOR THE COUNTRIES LISTED BELOW.

A. AFRICA: BENIN, CENTRAL AFRICAN REPUBLIC, LESOTHO, MALAWI, MALI, NAMIBIA, NIGER, SOUTH AFRICA, TANZANIA, ZAMBIA.

B. EUROPE: BULGARIA, CROATIA, ESTONIA, LATVIA, LITHUANIA, MALTA, SERBIA & MONTENEGRO, SLOVAKIA, SLOVENIA.

C. WESTERN HEMISPHERE: ANTIGUA & BARBUDA, BARBADOS, BELIZE, BRAZIL, COLOMBIA, COSTA RICA, DOMINICA, ECUADOR, PARAGUAY, PERU, ST. VINCENT & GRENADINES, TRINIDAD & TOBAGO, URUGUAY, VENEZUELA.

D. EAST ASIA-PACIFIC: FIJI, SAMOA.

8. WHILE THE PRESIDENT IS AUTHORIZED TO GRANT OTHER WAIVERS BASED ON NATIONAL INTEREST, NO COUNTRY SHOULD PRESUME THAT SUCH A WAIVER IS FORTHCOMING. ANY FURTHER WAIVERS, IF ACCOMPANIED BY COMPELLING JUSTIFICATION, COULD BE CONSIDERED ON A PROGRAM SPECIFIC CASE-BY-CASE BASIS.

9. IN ACCORDANCE WITH REF A, CURRENT FMF FUNDED MILITARY

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ASSISTANCE PROGRAMS FOR WHICH FUNDING HAS ALREADY BEEN COMMITTED (I.E., OBLIGATED AND COMMITTED TO SPECIFIC, CONCLUDED LETTERS OF OFFER AND ACCEPTANCE (LOA)) CONTINUE AFTER 1 JULY 2003. AS OF 1 JULY 2003, MILITARY ASSISTANCE FUNDS THAT HAD NOT BEEN COMMITTED TO THOSE COUNTRIES THAT ARE SUBJECT TO RESTRICTIONS WERE FROZEN.

10. FMF FUNDS OBLIGATED, BUT NOT YET COMMITTED TO LOAS ON OR BEFORE 30 JUNE 2003, ARE SUBJECT TO RESTRICTIONS. (FOR FMF, COMMITMENT OF FUNDS REFERS TO AN LOA BEING SIGNED BY THE HOST GOVERNMENT THEREBY CONCLUDING THE LOA). FOR IMET, WHERE FUNDS HAVE BEEN OBLIGATED BY 30 JUNE 2003 - TYPICALLY DONE WHEN INVITATIONAL TRAVEL ORDERS HAVE BEEN APPROVED OR OTHER DOCUMENTATION EVIDENCES THE OBLIGATIONS - THEY WILL NOT BE SUBJECT TO THE RESTRICTIONS. THIS WILL PERMIT STUDENTS TO CONTINUE THEIR COURSE OR COURSES, INCLUDING FOLLOW-ON COURSES, APPROVED ON SUCH ORDERS TO COMPLETION. FOR IMET FUNDED U.S. MOBILE TRAINING TEAMS, FUNDS ARE TYPICALLY OBLIGATED WHEN MILITARY DEPARTMENT AUTHORITY IS GIVEN TO ISSUE TRAVEL ORDERS OR OTHER DOCUMENTATION EVIDENCES THE OBLIGATIONS. FOR PLANNED OR ALLOCATED EDA, NO NEW GRANT EDA OFFERS WILL BE MADE AFTER 1 JULY 2003 FOR COUNTRIES SUBJECT TO THE RESTRICTIONS OF ASPA. IF AN EDA GRANT OFFER HAS BEEN MADE, BUT NOT YET ACCEPTED BY A COUNTRY, THE OFFER

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WILL BE CANCELLED. NO NEW MILITARY ASSISTANCE DRAWDOWNS (UNDER SECTION 506(A)(1) OF THE FOREIGN ASSISTANCE ACT) WOULD BE PROPOSED FOR A COUNTRY SUBJECT TO THE SANCTIONS.

11. FMS/FMF RESTRICTIONS FOR ASPA AFFECTED COUNTRIES ARE AS FOLLOWS:

A. COUNTRIES AFFECTED BY THE ASPA MAY CONTINUE TO PURCHASE DEFENSE ARTICLES, DEFENSE SERVICES, AND MILITARY EDUCATION AND TRAINING USING THEIR OWN NATIONAL FUNDS OR DONOR FUNDS.

B. LETTERS OF OFFER AND ACCEPTANCE (LOAS) THAT ARE FINANCED WITH FMF OR MAP FUNDS THAT ARE ACCEPTED BY THE COUNTRY ON OR AFTER 1 JULY 2003 WILL NOT BE IMPLEMENTED. THESE LOAS AND OTHER LOAS FINANCED WITH FMF OR MAP FUNDS THAT HAVE NOT BEEN ACCEPTED BY THE COUNTRY PRIOR TO 1 JULY 2003 SHOULD BE EITHER RESTATED WITH ANOTHER TERM OF SALE (E.G., CASH WITH ACCEPTANCE), EXTENDED, OR CANCELLED DEPENDING ON THE RECOMMENDATION OF THE SECURITY ASSISTANCE ORGANIZATION FOR THAT COUNTRY, THE DSCA COUNTRY DESK OFFICER, AND THE MILITARY DEPARTMENT.

C. NEW OR PENDING LOAS FINANCED WITH FMF OR MAP FUNDS WILL NOT BE COUNTERSIGNED OR ISSUED TO THE COUNTRY FOR ACCEPTANCE ON OR AFTER 1 JULY 2003.

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D. LOAS FINANCED WITH FMF OR MAP FUNDS ACCEPTED PRIOR TO 1 JULY 2003 REMAIN IN FORCE AND WILL BE EXECUTED.

E. AMENDMENTS AND MODIFICATIONS TO EXISTING IMPLEMENTED FMS CASES THAT ARE FINANCED WITH FMF OR MAP FUNDS ARE ALLOWED ON A CASE-BY-CASE BASIS WHEN APPROVED BY DSCA AS LONG AS PROGRAM SCOPE IS NOT INCREASED.

F. REQUISITIONS AND PIPELINE DELIVERIES ON MATERIEL BLANKET ORDER CASES FINANCED WITH FMF OR MAP FUNDS THAT WERE IMPLEMENTED PRIOR TO 1 JULY 2003 ARE ALLOWED TO CONTINUE.

G. LETTERS OF REQUEST (LORS) FOR LOAS TO BE FUNDED WITH FMF OR MAP FUNDS CAN BE RECEIVED BY THE USG, BUT WILL BE HELD IN ABEYANCE UNTIL ASPA RESTRICTIONS ARE REMOVED. SUCH LORS WILL BE EXEMPTED FROM THE LOA METRIC TRACKED BY DSCA.

12. FMS/FMF TRAINING AND IMET RESTRICTIONS FOR ASPA AFFECTED COUNTRIES ARE AS FOLLOWS:

A. NO NEW OBLIGATIONS FOR IMET OR FMS TRAINING CASES FUNDED WITH FMF OR MAP FUNDS MAY BE INCURRED AFTER 30 JUNE 2003 FOR THOSE COUNTRIES RESTRICTED BY THE ASPA. FOR TRAINING FUNDED WITH FMF OR MAP FUNDS OR UNDER IMET, STUDENTS IN TRAINING BEFORE 1 JULY 2003 MAY COMPLETE THEIR COURSE, AND MOBILE TRAINING TEAMS (MTTS) AND LANGUAGE

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TRAINING DETACHMENTS (LTDS) MAY COMPLETE TRAINING UNLESS THE DEPARTMENT OF STATE DIRECTS OTHERWISE. THIS INCLUDES SEQUENTIAL TRAINING (PROCEEDING TO THE NEXT SCHEDULED COURSE). IF COURSE COSTS HAVE BEEN OBLIGATED BEFORE 1 JULY 2003, THE STUDENT IS PERMITTED TO BEGIN TRAINING AND THE MTTS AND LTDS ARE ALLOWED TO BEGIN. IF COURSE COSTS HAVE NOT BEEN OBLIGATED BEFORE 1 JULY 2003, STUDENTS ARE NOT PERMITTED TO BEGIN A COURSE AND MTTS AND LTDS ARE NOT ALLOWED TO COMMENCE.

B. AFTER 30 JUNE 2003, IMET-FUNDED OR FMF OR MAP FUNDED MTTS AND LTDS MAY NOT BE EXTENDED BEYOND THEIR SCHEDULED TERMINATION DATE IF IT REQUIRES A NEW OBLIGATION FOR COUNTRIES AFFECTED BY THE ASPA.

C. AFTER 30 JUNE 2003, IMET-FUNDED TRAINING AIDS MAY NOT BE ISSUED FROM SUPPLY NOR PLACED ON CONTRACT BY THE SUPPLYING AGENCY IF THAT REQUIRES A NEW OBLIGATION. IF FUNDS WERE OBLIGATED FOR IMET-FUNDED TRAINING AIDS (E.G., LANGUAGE LABS AND SUPPORT) PRIOR TO 1 JULY 2003, DELIVERY AND INSTALLATION MAY TAKE PLACE. AFTER 30 JUNE 2003, NO NEW OBLIGATIONS FOR TRAINING AIDS SHOULD BE INCURRED FROM THE IMET ACCOUNT FOR A COUNTRY SUBJECT TO ASPA RESTRICTIONS.

D. COUNTRIES IN RECEIPT OF FY 2003 IMET FUNDING PRIOR TO THE ASPA TAKING EFFECT CAN PURCHASE TRAINING USING NATIONAL FUNDS AT

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FOREIGN MILITARY SALES (FMS) INCREMENTAL PRICES UNTIL 30 SEPTEMBER 2003. EFFECTIVE 1 OCTOBER 2003 (FY 2004), ASPA AFFECTED COUNTRIES THAT ARE NOT IN RECEIPT OF FY 2004 IMET FUNDING MUST PURCHASE TRAINING AT THE FMS RATE.

13. THIS GUIDANCE IS SUBJECT TO UPDATE AS REQUIRED.

14. DSCA POCS FOR ASPA: LEGAL GUIDANCE - LT COL RONALD TODD, DSCA/OGC, DSN 664-6588; POLICY GUIDANCE - MR. STEVE HARRIS, DSCA/P3, DSN 664-6611; IMET GUIDANCE - MS. DEBBIE SPENCER, DSCA/COMPT-RM, DSN 664-6577; AND FMF/FINANCIAL GUIDANCE - MS. PAM BERG, DSCA/COMPT-FM, DSN 329-3735.

BT

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